

DRAFT

DRAFT

# **WORLDWIDE REGULATORY AFFAIRS**

## **CHRONOLOGY REPORT**

**JANUARY 1995 - NOVEMBER 1995**

2048861234

DRAFT

CHRONOLOGY OF RECENT TOBACCO ISSUES

U.S. LITIGATION	1
- CLASS ACTIONS	1
- STATE SUITS	4
PM SUITS	10
- ABC	10
- EPA	13
- STAR TOBACCO CORP.	13
SMOKING AND HEALTH CASES	14
- BROWN	14
- ROGERS	14
OTHER LITIGATION AND RELATED ISSUES	15
ALLEGED NICOTINE "MANIPULATION"/"ADDICTION"	18
FDA	21
FTC	26
OSHA	27
ETS	29
ASHRE/BAQA	33
INGREDIENTS	35
OTHER PRODUCT RELATED ISSUES	37

2048861235

## U.S. LITIGATION

### CLASS ACTIONS

#### - BROIN

No new developments this year

#### - CASTANO

### February 1995

- 17 U.S. District Judge Okla Jones denied the plaintiffs' request for class certification on critical aspects of their claim. The court also denied the plaintiff's request to certify a class on medical monitoring and held that compensatory damages could only be awarded on an individual basis. Jones went on to certify a narrower class than had been requested by the plaintiffs and certified some issues.

In order for the alleged class in Castano to recover, millions of individual trials around the country would be necessary. The plaintiffs would have to prove injury in fact, causation and reliance on an individual basis.

### March 1995

- 8 Plaintiffs' lawyers asked Judge Jones to approve the largest notification effort ever initiated in a U.S. court. Lawyers for the prosecution said they hoped to reach 103 million Americans through paid newspaper, magazine, Internet and "900" advertising. This campaign would seek to target 40 million current smokers and an estimated 50 million people who have quit smoking.

Defendants filed a request in federal district court that would permit them to appeal the ruling by Judge Jones regarding class certification.

- 20 In an effort to speed up a process which usually takes many months, the plaintiffs filed a motion requiring the defendants to turn over all documents in 30 days. This motion also requested that Judge Jones place most of the documents in the public record.
- 21 "Addiction on Trial," an article dealing with the *Castano* case, appeared as part one of a three-part series in *The Wall Street Journal* (WSJ)
- "Smokers' Suit Tries New Approach: The Industry Made Them Do It," by Milo Geyelin, also appeared in the *WSJ*.
- 22 "South Louisiana, Site of Lawsuit by Smokers, Is Puffers' Paradise," by Bridget O'Brian, appeared as part two of the three-part *WSJ* series.
- 23 "Tobacco Dream Team: Experts Who Insist Nicotine Isn't Addictive," by Suein Hwang and Yumiko Ono, appeared as final entry of the *WSJ*'s three-part series on the tobacco industry.

2048861236

April 1995

- 3 PM filed a reply memorandum in support of 28 U.S.C. Section 1292(b) interlocutory appeal and stay of proceedings.

May 1995

- 15 Judge Jones granted a motion filed by PM and the other defendants allowing them to pursue an immediate appeal to the 5th Circuit Court of Appeals. This was based on his decision to certify certain common issues for class handling. Judge Jones also granted the defendants' motion to stay all proceedings in the trial until the 5th Circuit Court had ruled on the issue of class certification.
- 15 *New York Newsday (NYN)* featured a three-page article on the *Castano* suit.

July 1995

- 26 PM issued a press release with regard to the agreement by the 5th Circuit Court of Appeals to hear the tobacco companies' appeal in the *Castano* class-action case. The court would decide whether a consortium of nearly 60 law firms could continue the giant class-action suit.
- 27 "In a Tobacco Industry Victory, Suit to Get Appellate Review," by Glen Collins, appeared in *The New York Times (NYT)*.
- Although the appeal could take a year, most industry executives and analysts think the ruling could be issued in 1996.

August 1995

- 2 "Tobacco Analysts' Files Subpoenaed in Suit," by Glenn Collins, appeared in *NYT*.
- The records of five prominent tobacco securities analysts were subpoenaed by the consortium of 60 plaintiffs' lawyers as part of the *Castano* case.
- 30 Lawyers for the plaintiffs subpoenaed the five prominent tobacco analysts, requesting that every document and/or piece of correspondence relating to tobacco be turned over to them. This included any document reviewed or relied upon in the formulation of the analysts' opinions with respect to the purchase of tobacco stock.

2048861237

DRAFT

- ENGLE

April 1995

- 17 The Judge lifted an imposed stay which allowed the plaintiffs' lawyers to propose to the court the contents of a notice statement to be given to potential members of the class suit.
- 19 PM asked the 3rd District Court of Appeals to reinstate the stay while appeal of the class certification remained pending.

September 1995

- 27 Oral argument on defendants' appeal of the court's class certification was heard by the Florida Third District Court of Appeals.

2048861238

- STATE SUITS

FLORIDA

February 1995

- 20 PM and RJR announced that they filed a petition with the Supreme Court of Florida to prohibit the Florida Agency for Health Care Administration and the Florida Department of Business and Professional Regulation from filing and maintaining a lawsuit against the tobacco industry, pursuant to the Medicaid Third-Party Liability Act.
- 21 Under the direction of Gov. Lawton Chiles, the state of Florida filed suit against the tobacco industry in an attempt to recover \$1.4 billion of taxpayer dollars spent on Medicaid payments for health problems attributed to tobacco-related illnesses.
- 21 PM issued a statement claiming that the Florida lawsuit is based on an unconstitutional statute that was passed through the legislature in an unconstitutional manner—by an illegal, independent agency.

March 1995

- 8 A press conference to announce the formation of a national Coalition of States Against Tobacco Companies was held by Gov. Lawton Chiles of Florida; Mississippi Attorney General Michael Moore; Minnesota Assistant Attorney General Steven Hunegs; and West Virginia Lead Trial Counsel Susan Nial.
- Coalition members represented the four states that have filed suit against the tobacco industry on behalf of taxpayers for money spent treating tobacco-related illnesses of Medicaid patients.
- 14 Steve Parrish was interviewed by Paul Weyrich, host of *National Empowerment Television s (NET), Direct Line,* regarding the Florida suit.
- 20 A motion on behalf of the six tobacco companies was filed by attorney Douglas Chumbley in an attempt to put the Florida suit on hold while two related lawsuits were resolved.
- 28 The Florida Senate Commerce Committee voted, by a margin of 11-3, for the repeal of the law steered through the legislature by Gov. Chiles, which enabled him to file the state Medicaid lawsuit against the tobacco industry.

April 1995

- 7 The Palm Beach Circuit Court issued a stay in Gov. Chiles' lawsuit against the tobacco industry. This action allowed important constitutional issues related to the suit to be addressed — namely, the federal constitutionality of the state statute under which the suit was brought, and the state constitutionality of the two agencies bringing the suit. Judge Roger Colton of the 15th Judicial Circuit Court issued the stay for three months. Judge Colton also declined to agree to the state's request that no further stays be granted.

- 18 The Florida Supreme Court rejected a tobacco industry request to bar the state from suing the industry to cover the public cost of smoking-related illnesses. This request was formulated on the basis that neither the Agency for Health Care Administration, nor the Department of Business and Professional Regulation had authority to sue tobacco companies.
- 28 The Florida House Commerce Committee voted unanimously to repeal the law used by Gov. Chiles to sue tobacco companies for state medical costs of tobacco-related illnesses.

May 1995

- 1 or 6? The Florida Senate voted to repeal the law allowing the governor to sue tobacco companies.
- 12 Circuit Court Judge F.E. Steinmeyer rejected the state's motion to drop Publix, Associated Industries of Florida, and the National Association of Convenience Stores from a suit filed against them that included PM.

June 1995

- 16 Judge Steinmeyer ruled that the state's Medicaid law applies only to injuries arising out of conduct occurring after the date the law became effective – July 1, 1994. The Court also found Florida's Agency for Health Care Administration, the body responsible for administering and enforcing the Medicaid law, unconstitutionally structured.

PM believes that, if upheld on appeal, this ruling would mean that no agency or official of the state of Florida has standing to bring an action under the 1994 Amendments, including the action pending in West Palm Beach.

Finally, Judge Steinmeyer held that three of the substantive provisions of the 1994 Amendments dealing with market share liability, the abrogation of affirmative defenses and the use of statistics were within the legislature's power to enact.

PM believes that this ruling is incorrect and will appeal. The attorney general has already expressed his intention to appeal this decision.

- 19 PM Inc. issued another statement to clear up confusion regarding the Florida Court's decision. This statement reiterated the ruling and explained more fully the decision.
- 28 Judge Steinmeyer issued a written order that declared key provisions of the 1994 Amendments to the Medicaid Third-Party Liability Act to be unconstitutional and held that the state agency charged with administering the Florida's Medicaid program was unconstitutionally structured. The Court held that the Medicaid law applies only to allegedly tortious conduct occurring AFTER July 1, 1994, the date the law became effective.

The court declared unconstitutional the provision under the new Medicaid law that allowed the state to join together in a single lawsuit – producing hundreds or even thousands of claims for Medicaid reimbursement, without ever identifying the injured Medicaid recipients. The court also struck other portions of the new

Medicaid law that attempted to direct judges to interpret Florida law in a manner favorable to the state. PM issued a release stating that the ruling should provide the basis for the dismissal of a claim by the state of Florida.

## - MASSACHUSETTS

### November 1995

- 28 PM, RJR, B&W, Lorillard Tobacco Co., and Liggett Group Inc., filed suit in federal court seeking a declaratory judgment against Massachusetts Attorney General Scott Harshbarger, who said he intended to bring a lawsuit against the tobacco industry.

Harshbarger said that the state of Massachusetts intends to file suit to collect funds for Medicaid expenses incurred from treating smoking-related diseases. A statement released by PM Inc., et al, claimed that the Massachusetts state law, as interpreted by Harshbarger, violated federal law and unconstitutionally deprived the manufacturers of the Due Process, Equal Protection and other rights under federal law.

## - MISSISSIPPI

### February 1995

- 14 B&W filed a lawsuit for \$1 million in U.S. District Court against attorney Richard Scruggs of Pascagoula, alleging that Scruggs conspired to convince a former paralegal to disclose documents. Scruggs is one of the team of attorneys seeking to sue the tobacco industry for taxpayer money spent treating tobacco-related illnesses. The suit was filed by Attorney General Mike Moore last year.
- 21 Jackson County Chancery Judge William Meyers of Pascagoula ruled that Mississippi could proceed with its lawsuit seeking compensation for tax dollars spent on Medicaid for the poor, and on insurance for state workers who suffer from smoking-related illnesses.

PM issued a statement asserting that the court's procedural ruling appears to be contrary to the law of Mississippi and basic notions of fairness.

### November 1995

- 27 Kentucky Circuit Court Judge William Knopf refused to lift a restraining order against former B&W executive Jeffrey Wigand. Judge Knopf ruled that Wigand must disclose to his former employer what information he plans to divulge before he can testify in the Mississippi Medicaid suit. Wigand is the highest-level executive to break ranks with the tobacco industry.
- 29 Jeffrey Wigand completed his deposition in closed-door testimony for the plaintiffs in the Mississippi case.
- 30 WSJ published an article by Suein Hwang reporting that Attorney General Michael Moore was pleased with the testimony taken in the deposition. Wigand was able to testify after a Mississippi judge refused to quash a subpoena ordering him to appear at the state's lawsuit despite Judge Knopf's earlier ruling. Hwang also reported that Roberta Walburn, a lawyer representing the state of Minnesota, said that her

2048861241



legal team had an excellent chance of eventually gaining use of Wigand's deposition for her case.

**December 1995**

- 5 Six news organizations asked Judge William Myers to make public the closed-door testimony of Jeffrey Wigand. Richard Scruggs, the lawyer representing both Wigand and the state of Mississippi, said the state would probably file its own motion to unseal the testimony.

Judge Myers has not yet taken action but can set a hearing after five working days' notice.

- **MINNESOTA**

**March 1995**

- 11 PM and other tobacco companies asked Ramsey County District Chief Judge Kenneth Fitzpatrick for the dismissal of Blue Cross/Blue Shield (BC/BS) of Minnesota as a plaintiff and are asking that three of the nine counts brought in the lawsuit be dropped.

The state of Minnesota, along with BC/BC, is attempting to recover hundreds of millions of dollars from the tobacco industry as reimbursement for health-care costs associated with the treatment of smoking-related diseases.

**May 1995**

- 19 Judge Fitzpatrick denied a motion by PM, et al., to have the lawsuit dismissed for failure to state a claim. Fitzpatrick also turned down the defendants' motion to remove BC/BS as a plaintiff in the case. The ruling allowed the defendants to take discovery from individual smokers, preserving all defenses asserted by the defendants, including those based on smoker conduct.

- **TEXAS**

**November 1995**

- 28 PM, RJR, B&W, Lorillard and the Liggett Group filed suit in federal court seeking a declaratory judgment against Texas Attorney General Dan Morales and two state agencies.

Morales said he intends to bring a lawsuit against the tobacco industry for collection of funds from Medicaid expenses incurred from treating smoking-related diseases.

A statement released by PM Inc., et al, said the lawsuit would violate the Texas Constitution and state law. The statement also asked for a declaratory judgment showing that Morales lacked legal authority to file suit.

Also named as defendants were the Health and Human Services Commission of the state of Texas, the Department of Health of the state of Texas, and the Department of Human Services of the state of Texas.

2048861242

DRAFT

- WEST VIRGINIA

May 1995

- 3 Circuit Court Judge Irene C. Berger dismissed eight out of 10 claims brought by the West Virginia attorney general's lawsuit against the tobacco industry. The suit sought to recover money spent on behalf of Medicaid for treatment of recipients who smoke cigarettes. Judge Berger's decision was based on Attorney General Darrell McGraw's lack of legal authority to assert the eight claims. The remaining claims were for alleged consumer fraud and antitrust violations. PM asked the court to dismiss those claims as well.

October 1995

- 21 Judge Berger ruled that Attorney General McGraw cannot hire lawyers outside his office and pay them money earned from settlements or judgments. This does not prohibit the attorney general from hiring outside lawyers under other types of fee arrangements.

2048861243

- OTHER STATES

February 1995

- 23 California Assemblyman Richard Katz (D), introduced a bill which would allow the state of California and private insurance companies to sue tobacco companies for recovery of money spent on treating persons with smoking-related illnesses.

This bill would remove an exemption from product liability lawsuits given to tobacco companies in a 1988 legislative compromise streamlining California's system of liability law. The bill would also allow private health-care companies to sue for costs of providing health care to patients with tobacco-related illnesses, and allow both state and private firms to sue for punitive damages.

March 1995

- 13 Lawmakers were asked to decide whether Maine should join the growing group of states suing tobacco companies in order to recover millions of dollars spent treating smoking-related diseases.
- 30 Connecticut Attorney General Richard Blumenthal asked the legislature to pass a law to make it easier for the state to win lawsuits against cigarette makers for recovery of state Medicaid costs in the treatment of smoking-related illnesses.

May 1995

- 16 The New York State Assembly Medicaid Liability Bill was discussed at a meeting of the State Assembly Social Services Committee. The bill was sponsored by Peter Grannis and is in its very early stages of development.

November 1995

- 16 Maryland Gov. Parris Glendening announced plans for a lawsuit against the tobacco industry for recovery of Medicaid costs incurred from treating smoking-related diseases. According to *The Washington Post*, Maryland spends about \$60 million a year on these costs. The MD attorney general invited 100 law firms from around the country to submit proposals to represent the state in the suit and to agree to accept a court-awarded fee if they won the case.

PM USA issued a statement saying that Maryland had no viable, legal basis upon which to sue the cigarette manufacturers.

2048861244

PM SUITS

ABC

January 1995

- 31 Circuit Judge T.J. Markow stayed his earlier ruling that ABC not identify "Deep Cough" until March 1.

February 1995

- 22 RJR sued ABC over stories claiming the tobacco industry manipulated nicotine levels in cigarettes to cause addiction in smokers.

March 1995

- 7 ABC won the 1994 George Polk Award in the category of network television-reporting for its "Day One" segment which asserted that tobacco companies artificially elevate nicotine levels.
- 28 Judge Markow moved the trial date from June 5 to Sept. 18.

May 1995

- 5 Judge Markow denied ABC's motion for sanctions against PM. The court did not find the PM documents photocopied on red paper difficult to read, or as emitting an unpleasant odor. The court also found the materials, in a reasonably usable form, did contain the information requested by ABC.
- 12 Lawyers for ABC asked Judge Markow for access to more internal memos and research, arguing that the documents could prove PM's libel lawsuit as groundless. The trial was to begin on Sept. 18 but was pushed back to Oct. 9.
- 23 "Tar Wars: Philip Morris is Putting TV Journalism on Trial in its Suit Against ABC," appeared in the *WSJ*, by Alix Freedman and Amy Stevens.

July 1995

- 12 Judge Markow withdrew his order for ABC to disclose the name of its confidential source referred to as "Deep Cough." Judge Markow wrote that before ABC disclosed its source, PM would have to supply further evidence proving that information was unattainable elsewhere and that it had a compelling need for the information.
- 20 According to a story in the *Richmond Times Dispatch*, ABC claimed that the \$10 billion lawsuit filed by PM against them should be dismissed because PM said it did not intend to disprove anything about its motive regarding the level of nicotine in cigarettes. Judge Markow had ruled that motive is an essential part of the complaint.

August 1995

- 21 Capital Cities/ABC agreed to settle the libel suit brought against it by PM Cos. Inc.

and PM Inc. As part of the settlement, ABC acknowledged that it made a mistake and issued a public apology to its viewers and to PM. ABC read the statement on "World News Tonight," "Monday Night Football," and "Day One." ABC said they would pay the total amount of attorney fees, costs, and out-of-pocket litigation expenses incurred by PM in connection with the lawsuit.

"Capital Cities, Philip Morris Settle Lawsuit," appeared in the *WSJ* by Alix Freedman and Elizabeth Jensen.

"ABC News Settles Suits on Tobacco," appeared on page one of the *NYT*, by Mark Landler.

"ABC Apologizes for Allegations About Nicotine 'Spiking' in Cigarettes," appeared in *The Washington Post*, by John Schwartz.

Other coverage included articles in *The Daily News*, *USA Today* and, *The New York Post*.

- 23 *The Washington Post* wrote in article, "Long-Term Effect of ABC Settlement Concerns Critics," which discussed the effect of the ABC law suit on journalism and free speech.

Other coverage on this topic included editorials and news stories in *USA Today*, the *Daily News*, *New York Newsday*, *The Washington Times* and, the *Boston Globe*.

- 24 *WSJ* article, "Why ABC settled with the Tobacco Industry," was reported on page one, Section B, in "Marketplace," by Alix Freedman, Elizabeth Jensen and Amy Stevens.

PM ran ad, "Apology Accepted." Ads ran in the *WSJ*, *The Daily News*, *New York Newsday*, and the *New York Post*. Additionally, the ad ran in approximately 700 papers across the country.

The *NYT* reported in an article by Mark Landler that U.S. Rep. Henry Waxman (D-Calif.) planned to send a letter to PM asking to make public the internal documents filed in the suit against ABC ("Critic Pushes Tobacco Case Settled by ABC").

- 25 The "Review & Outlook" section of *WSJ* discussed President Clinton's plan to curtail youth smoking and concluded that although government has a role, such a campaign is better left to civic culture.

Plaintiffs' lawyers in the *Castano* case subpoenaed ABC, its three top executives and their law firm in the libel case for the release of documents turned over to the network by PM. ("Tobacco Plaintiffs' Lawyers Seek Release of Philip Morris Papers," by Milo Geyelin, *WSJ*.)

- 27 PM USA ran the advertisement, "Is *The New York Times* in denial?" The ad was a copy of the letter from PM USA CEO James Morgan to the readers of *NYT* explaining that the editorial entitled, "Smoking's Unsettled State," was incorrect in its characterization of the *PM v. ABC* lawsuit.

In the "Money and Business" section of *The Sunday New York Times* Stuart Elliot wrote, "Uncle Sam is No Match for the Marlboro Man," which covered the history

2048861246

of Marlboro. More stories appeared across the country, including articles in *The Washington Post* and the *Boston Globe*.

- 28 "Philip Morris Revels in Rare ABC News Apology for Report on Nicotine," by Mark Landler, in *NYT*.

"Anti-smoking Sentiment Flares In Europe's Smoke-Filled Cafes," by Tara Parker-Pope, in *WSJ*.

**September 1995**

- 1 *American Journalism Review* ran, "Striving to Unmask Anonymous Sources," by Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press. Kirtley discussed PM's efforts to discover the identity of "Deep Cough."
- 4 *Newsweek* reported, "The Cave on Tobacco Road -- ABC's Decision to Settle With Philip Morris is a Blow to All Real Reporting," by Jonathan Alter.

**November 1995**

- 1 The *American Bar Association Journal* published, "Smoking Guns: ABC, Philip Morris and the Infamous Apology," by Steve Weinberg, which provided an in-depth look at the ABC settlement.

2048861247

- EPA

May 1995

- 24 The court denied the EPA's motion to dismiss on the issue of legal standing (unclear).

The tobacco industry's challenge to the EPA's arbitrary and capricious classification of environmental tobacco smoke will now proceed to trial or summary judgment. This is the second time the EPA has failed to have the case dismissed. The ruling clearly establishes that PM Inc. and the other parties in the litigation have alleged sufficient facts to obtain judicial review of the EPA's action.

- STAR TOBACCO CORP.

January 1995

- 19 PM Incorporated filed an unfair-competition suit in the U.S. District Court in New York against Star Tobacco Corp., for using a cowboy-theme marketing campaign for its Gunsmoke cigarette brand.
- 22 The presiding judge granted PM a temporary injunction to bar Star Tobacco Corp. from marketing Gunsmoke cigarettes.

- SMOKING AND HEALTH CASES

**BROWN**

No new developments this year

- **ROGERS**

January 1995

- 31 Jury selection began in the *Rogers* case at the Marion County Courthouse in Indianapolis, Ind. Richard Rogers filed the lawsuit with his wife, Yvonne, in 1987 against PM, RJR, American Tobacco Co., Liggett, as well as retailers, claiming that they caused his cancer. Upon his death seven months later, Mrs. Rogers amended the lawsuit to include charges of wrongful death and an unspecified amount in compensatory and punitive damages. The lawsuit also charged the companies with negligence for promoting cigarette smoking as safe and pleasurable, but not hazardous.

February 1995

- 2 The *Rogers* trial began with Superior Court Judge Kenneth Johnson presiding. This was the first smoking liability lawsuit to go to trial since Congress held hearings last spring during which tobacco executives were questioned about the dangers of smoking.
- 14 Judge Johnson dismissed all claims for punitive damages, ruling that the plaintiff had not made a sufficient case to support such claims.
- 22 The jury foreman announced the jury could not return a unanimous verdict, and therefore refused to award damages to the Rogers family. Judge Johnson declared a mistrial. The case is scheduled for retrial in August 1996.



**OTHER LITIGATION AND RELATED ISSUES**

**January 1995**

- 10 Federal Judge Richard Own dismissed a class-action lawsuit filed against PM by shareholders alleging the company made fraudulent statements in the months before the 1993 Marlboro price cut to raise the price of PM stock.
- 13 A \$1 million class-action suit against three tobacco companies—Imperial, a wholly-owned unit of Imasco Ltd.; Rothmans Inc.; and RJR Nabisco Holdings Corporation's RJR, MacDonald Inc., was filed by three Canadian smokers. The plaintiffs claimed to be addicted to cigarettes and sought "aggravated, punitive and exemplary damages" for their injuries.
- 30 The first tobacco liability suit went to trial with the claim that, because of the plaintiffs' respiratory ailments, they are entitled to a smoke-free environment under the *Americans with Disabilities Act*. The non-jury trial for Diane Emery, who suffers from cystic fibrosis, and Patricia Young, an asthmatic, will be held in federal court in Dallas, Texas.
- 31 The British Legal Aid Board granted preliminary aid to 300 British smokers seeking to sue five tobacco companies, including PM, claiming failure to warn of smoking dangers.

**February 1995**

- 2 U.S. District Judge Barefoot Sanders told plaintiffs they should have brought their claim under the reasonable accommodation provision, of the *Americans with Disabilities Act*, rather than the one they chose. The plaintiffs planned to appeal.
- Legislation that would limit punitive damages and cap plaintiff attorneys' fees was introduced in the U.S. Senate. The bill would restrict punitive-damage awards in civil cases to three times compensatory damages, or \$250,000, whichever is greater. The bill would also require plaintiffs' lawyers in personal-injury cases to charge hourly rates, instead of a standard contingent fee, when defendants make early settlement offers.
- 17 The House Commerce Committee approved legislation to give U.S. corporations relief from investor lawsuits, clearing the way for a vote in the full House in March.

**March 1995**

- 8 According to *WSJ*, the Manville Unit sued an RJR Unit to bar fiberglass from cigarettes to avoid becoming entangled in a growing web of liability lawsuits.
- The House approved a bill that would require losers of civil lawsuits in federal courts to pay some of the legal expenses of the winners.
- This was the first of three installments in the House Republicans' agenda to change the risks and rewards of litigation.

2048861250

- 8 According to a new study from the Centers for Disease Control and Prevention (CDC), by the year 2000, 59 percent of North Carolina's private employees will have no legal protection from second-hand smoke in the workplace. The study, published in the *Journal of the American Medical Association*, showed that the number of regulations restricting smoking has increased dramatically during the past year, with the new laws offering little protection for workers.
- 10 The House approved legislation to limit the size of damage awards in civil suits. The measure would set a national limit on the amount of punitive damages in nearly all civil cases. The ceiling would be \$250,000, or three times economic damages, whichever is greater. It would not affect suits brought under such federal laws as the *Civil Rights Act* and the *Americans With Disabilities Act*.
- 15 Mealey Publications Inc., a publishing house known for comprehensive reporting of new niches of litigation, will produce bimonthly, as of May, *Mealey's Litigation Report: Tobacco*. Coverage will include week-to-week developments in the national class action, second-hand smoke lawsuits, state suits, etc. and will contain news stories, case summaries, full text of court opinions, complaints, etc.
- 20 The 7th U.S. Circuit Court of Appeals in Chicago refused to allow a group of hemophiliacs to proceed with a class-action suit alleging they contracted the AIDS virus through blood-clotting medicine. The order granting class status in the *Castano* case mirrored much of the reasoning struck down by the Appeals Court panel in Chicago.
- 22 A press report stated that eight non-smokers who filed suit against Japan Tobacco Inc., claiming that the company has a duty to pay compensation for damages allegedly caused by ETS exposure.

April 1995

- 25 According to an article in the *WSJ*, the Senate Labor and Human Resources Committee voted to delete a limit on punitive damages contained in legislation that sets new standards for medical malpractice litigation. The committee approved language that directs judges, rather than juries, to set punitive awards.

May 1995

- 4 Senate Republicans lost support for broad-based limits on civil lawsuits.
- 10 The Senate approved a product-liability bill, which would set new limits on lawsuits against manufacturers and distributors of faulty products.

2048861251

July 1995

- 17 Ronald Motley, a lawyer from Charleston, S.C., showed tobacco industry documents to the Association of Trial Lawyers of America (ATLA) alleging that tobacco companies had actively marketed to minors in the '70s. The ATLA is the world's largest plaintiffs' bar.

August 1995

- 2 "Tobacco Analysts' Files Subpoenaed in Suit," by Glenn Collins appeared in the *NYT*. The records of five prominent tobacco securities analysts were subpoenaed by the consortium of 60 plaintiffs' lawyers as part of the *Castano* case.

September 1995

- 2 "Former Smoker Is Awarded \$2 Million In Suit Over Illness Blamed on Filter" by Suein Hwang, appeared in the *WSJ*. The plaintiff, Milton Horowitz, a 72-year-old former smoker who blames his illness on a type of filter used in Lorillard Inc.'s Kent cigarettes from 1952-56, won the suit.

A state court jury in San Francisco decided that Lorillard Inc. and one-time filter manufacturer Hollingsworth & Vose Co. should be held responsible for a rare asbestos-related disease. Horowitz and his wife were awarded \$1.3 million in compensatory damages and \$700,000 in punitive damages – the largest award ever in a tobacco liability case. Lorillard attorneys vowed to appeal the decision.

- 6 "Lawyers Stress Fiscal Benefits of Smoking," by Milo Geyelin, appeared in the *WSJ*. According to court pleadings, where states attempt to recover the costs incurred in treating welfare recipients, tax revenues from the sale of cigarettes are a benefit for the states. Geyelin cited Murray R. Garnick of Arnold & Porter, who stated that the lawsuits do not depend upon showing that cigarette companies committed a wrong. "The theory that premature death from smoking saves states money," he added, "is supported by studies conducted by the Congressional Research Service and The Rand Corp."
- 11 U.S. District Judge Michael Mukasey dismissed two class-action cases against PM of alleged violations of securities laws, arising from claimed misrepresentations of nicotine. The plaintiffs argued that PM Companies Inc. and its corporate officers misled them by concealing evidence that nicotine is an addictive property. The cases were *State Board of Administration of Florida v. Philip Morris Companies, Inc. et al.,* and *Betty Grayson Kurzweil et al., v. Philip Morris Companies, Inc. et al.,*.
- 26 "Anti-Tobacco Activists Hope to Put Industry's Legal Tactics on Trial," by John Schwartz and Sandra Torrey appeared in *The Washington Post*. A report in the sidebar, "In Practice of Corporate Defense, Kansas City Firm Has Privileged Position," discussed the defense strategy of Shook, Hardy & Bacon.

October 1995

- 13 *Tobacco Reporter* publishes, "A guide to U.S. litigation affecting the tobacco industry."

2048861252

- ALLEGED NICOTINE "MANIPULATION"/"ADDICTION"

February 1995

- 13 The Center on Addiction and Substance Abuse (CASA) at Columbia University released a study showing that abuse of tobacco, drugs and alcohol will eat up nearly one-fifth of the \$430 billion the country will spend this year on Medicaid, Medicare and other federal, health and welfare programs. The country will have \$77.6 billion in substance-related costs.
- 14 Testimony was given at a hearing in Annapolis to oppose the "spiking" bill (SB 171) in Maryland. SB 171 would add a provision to the Maryland code prohibiting any person from "spiking" any cigarette intended to be offered for sale in Maryland. "Spiking" is defined to mean "increasing the nicotine content" of cigarette smoke by means of either "an addition to" or "a manipulation of" the "ingredients" of the cigarette.
- ? A U.S. national survey found broad support among adults for the implementation of a variety of strategies aimed at preventing children from using tobacco. The various survey results found that 71 percent supported extending government regulation of nicotine products. The survey was sponsored by the Robert Wood Johnson Foundation, a healthcare philanthropy group. (ROGER: I can't find date, will do lexis/nexus search next week.)

May 1995

- 15 During a special lecture at Harvard Medical School, David Kessler called for a campaign to stop youngsters from forming addictions to tobacco. Kessler said he could not comment on the FDA deliberations or the timetable making a decision on whether the agency has jurisdiction over nicotine as a drug. FDA regulations currently define "drug" as an "article (except for food) intended to affect the structure and function of the body."

June 1995

- 8 A story in the *NYT* appeared, claiming documents containing previously undisclosed research over a period of 15 years showed that PM had studied nicotine and found that it affected the body, brain and behavior of the smoker. The article also stated that these documents asserted that PM focused their research on college students and young teenagers.

James Morgan, chairman and CEO of PM USA, sent a letter to the *NYT* refuting these allegations. The letter was never published.

Rep. Martin T. Meehan (D-Mass.) wrote to U.S. Attorney General Janet Reno asking her to renew investigations into perjury and fraud by PM with regard to the *NYT* articles.

Rep. Henry Waxman (D-Calif.) sent a letter to former PM CEO William Campbell stating that the documents in question appeared to conflict with Campbell's sworn testimony. Waxman asked Campbell for a personal explanation.

- 9 A follow-up story in the *NYT* reported that some members of Congress have

suggested that PM executives have deceived the public. Plaintiffs' lawyers in tobacco suits commented that the PM research would have a major effect on anti-tobacco litigation.

Geoffrey Bible, chairman and CEO of PM corporate companies, sent a memo to employees regarding the two stories in the *NYT*. In it he stated that the documents cited in the articles raised no new questions concerning possible jurisdiction of cigarettes by the FDA. The memo continued to state that information in the *NYT* in no way conflicted with or contradicted the testimony given by PM officials during Congressional hearings conducted by Rep. Waxman (D-Calif.) last year. Bible also said that most of the documents discussed in the articles were presented to the plaintiffs in the *Cipollone* trial in 1988. Contrary to the contentions of the *NYT*, these documents were not "new news."

Much of the research referred to was conducted at a time when a number of researchers, including members of the Tobacco Group and the National Cancer Institute, suggested the development of cigarettes with altered tar and nicotine ratios.

- 28 Health Canada released a study on nicotine levels in cigarette tobacco and tobacco smoke. The study analyzed Canadian cigarettes sold between 1968 and 1995.

#### July 1995

- 4 An article in the *NYT* reported that the University of California in San Francisco will make available hundreds of documents showing that the tobacco industry concealed its knowledge of the addictive nature of nicotine and other harmful effects of smoking.
- 14 A *NYT* article stated that when PM claimed Merit had less than half the "tar" of regular cigarettes, it did not say that it also had 60 percent of the nicotine. *NYT* reported that this is at odds with tobacco industry claims – that nicotine levels rise and fall in direct proportion to "tar" levels.

#### October 1995

- 18 A *WSJ* story titled "Tobacco Firm Shows How Ammonia Spurs Delivery of Nicotine," written by Alix Freedman, reported that according to B&W internal reports, leading U.S. tobacco firms enhance nicotine delivery to smokers by adding ammonia-based compounds to their cigarettes. The B&W documents state that "Ammonia technology is critical to the Marlboro character, taste and delivery." A side-bar story titled "Fine-Tuning Marlboro" discussed the amounts of sugar, humectants and acetaldehyde in Marlboro cigarettes.

PM USA released a statement in response to the *WSJ* story stating that the company does not use ammonia in the cigarette manufacturing process to increase the amount of nicotine inhaled by the smoker or to "affect the rate of absorption of nicotine in the bloodstream of the smoker," or "to increase the potency of the nicotine a smoker actually inhales."

- 25 Dr. Victor DeNoble, a former PM employee and nicotine researcher, spoke to Minnesota's Smoke Free 2000 Coalition because of his support for the Minnesota legislation aimed at limiting tobacco access for/by America's youth.

DRAFT

November 1995

- 9 A CBS-TV station in Los Angeles killed a controversial commercial critical of the tobacco industry. The spot was stopped from airing after the station manager reevaluated a line in the ad copy that said, "The more nicotine cigarettes have, the more hooked you'll be." The station managers decided the line implied "spiking." The *NYT* reported the story on Nov. 11. The station resumed airing the ad on Nov. 15.

2048861255

- FDA

January 1995

- 3 "Front Line," a PBS documentary series, aired "The Nicotine War," which looks at the efforts of Kessler to regulate the nicotine content in tobacco products. The piece climaxed with an account of how recent legislative efforts to regulate the tobacco industry have been derailed by a powerful Republican-led Congress.

February 1995

- 17 A bill sponsored by House Republicans aimed at putting a moratorium on new federal regulations was approved by the House Government Reform and Oversight Committee. The bill, if enacted, would prevent the FDA from deciding this year to regulate cigarettes. The moratorium would end Dec. 31, 1995.

March 1995

- 8 David Kessler spoke to Columbia University Law School students and resumed his crusade against tobacco by labeling teen smoking as a "pediatric disease." Kessler attacked tobacco companies for allegedly encouraging teen smoking through aggressive advertising campaigns.
- 26 "Making Gains on the Winds from Washington — What if Congress Reforms the FDA? Investors Should Think About it Now," by Glen Collins, appeared in the *NYT*.

May 1995

- 15 During a lecture at Harvard Medical School, David Kessler called for a campaign to stop youngsters from becoming addicted to tobacco. Kessler said he could not comment on FDA deliberations or the timetable for making a decision on whether the agency has jurisdiction over nicotine as a drug, which is defined by agency regulations as an "article (except for food) intended to affect the structure and function of the body."
- 16 "Escalating the War on Tobacco With Teen Smoking on the Rise, an FDA Crackdown on the Tobacco Industry is Expected Soon," by Rita Ciolli, appeared in *New York Newsday*. The story ran again on May 19 in *The Los Angeles Times* and on the wires.

July 1995

- 13 Phil Hiltz of the *NYT* reported that the FDA has concluded, for the first time, that nicotine is a drug that should be regulated, and has submitted a proposal to President Clinton. In the piece, Rep. Richard Burr (R-N.C.) said that as long as tobacco is a legal product, all federal agencies should treat it as a legal product.

Suein Hwang and Alix Freedman of the *WSJ* reported that the FDA is seeking White House approval for a new attack on smoking by children by proposing tough new federal restrictions on cigarette and smokeless tobacco sales to minors.

- 14 A news conference held on Capitol Hill by a group of tobacco-state lawmakers

2048861256

asserted that Kessler is vastly exceeding his authority and demanded that Clinton rein him in. House Speaker Newt Gingrich said, "The FDA has lost its mind." Rep. Richard Burr (R-N.C.) remarked that the FDA should concentrate on its "core mission" of approving drugs and medical devices.

The *WSJ* reported that President Clinton backs action to curb teen smoking and shares the FDA's concern about underage smoking. Clinton also stated that he had not yet received recommendations from the FDA. The *WSJ* ran two other pieces: one on nicotine and low-tar cigarettes, which questioned nicotine-to-tar ratios, and the other on whether the FDA's proposal would aid plaintiffs in tobacco suits.

### August 1995

- 3 A report in the *WSJ* reported that President Clinton will support FDA's effort to assert jurisdiction over tobacco. Details are sketchy, but administration officials stated that jurisdiction would be limited to areas related to smoking by minors.

COSH held a press conference to announce results of a poll claiming its research shows 67 percent of those surveyed support FDA regulation of tobacco.

PM USA offered statements to those reporters questioning the *WSJ* story, stating that the company did not know if the report was correct.
- 4 A story by Tim Noah in the *WSJ* reported that House Minority Leader Richard Gephardt joined forces with tobacco-state Democrats to block White House plans to extend federal regulation to cigarettes.

"Does FDA's Power Extend to Cigarettes?" by Milo Geyelin in the *WSJ* questioned whether the FDA has legal authority to regulate cigarettes.
- 9 President Clinton cracked down on teenage smoking in a speech to the National Baptist Convention in North Carolina and stated that he would have a more definitive plan within the near future.
- 10 The FDA asserted jurisdiction over tobacco. "Clinton to Declare Nicotine in Cigarettes a Drug that can be Regulated by FDA" appeared in the *WSJ*. Later, President Clinton held a ceremony in the Oval Office with children to announce a proposal to curb youth smoking, followed by a press conference to announce acceptance of the findings that nicotine in cigarettes be declared an addictive drug and be regulated by the FDA.

The regulations would ban all cigarette sales from vending machines and self-service displays, allowing only sales by clerks. The rules would also forbid brand-name tobacco advertising at sporting events, on products like T-shirts not related to smoking; forbid outdoor advertising within 1,000 feet of schools and playgrounds; and limit cigarette advertising in magazines with significant numbers of young readers. The FDA proposal also required the tobacco industry to finance a \$150 million annual public relations campaign to deter youth from smoking.

Steve Parrish, SVP for corporate affairs, announced during a press conference that Philip Morris and the four major tobacco companies, along with Coyne-Beahm Inc., a North Carolina advertising agency, had filed suit in the U.S. District Court for the Middle District of North Carolina to stop the FDA from proceeding with its proposed regulations governing cigarettes.

2048861257



Five advertising groups and a magazine publishing group filed suit in Greensboro, N.C., raising First Amendment challenges to proposed bans on outdoor tobacco ads within 1,000 feet of schools and playgrounds and brand-name advertising at sporting events. The Association of National Advertisers is one of the plaintiffs.

UST's U.S. Tobacco Co. and Conwood Co., two makers of smokeless tobacco, and the Eastern Dark Fired Tobacco Growers Association, a Tennessee cooperative of smokeless tobacco farmers, sued the FDA in Federal Middle District Court of Tennessee.

- 11 The Flue Cured Tobacco Cooperative Stabilization Corp., a Raleigh, N.C.,-based group representing 180,000 growers and operators, decided to join the five cigarette makers in their suit. Fred Bond, the group's chief executive, said he planned to file an amended complaint in Greensboro the week of Aug. 13.
- 14 "Tobacco Firms Rush to Counter-attack Despite Signs of Dissension in the Ranks," by Yumiko Ono, was published in the *WSJ*. The article reported that cigarette retailers have accused the tobacco industry of trying to shift the blame for underage smoking onto storekeepers. The story continued that as PM pursues its own plan to curb youth smoking – such as limiting cigarette sales to areas within a clerk's sight – rival tobacco companies believe that this would drastically cut their shelf space. Additionally, a split over tactics is emerging among tobacco allies – Sen. Wendell Ford (D-Ky.), Rep. Charlie Rose (D-N.C.) and Rep. Thomas Bliley (R-Va.) all have their own proposals on how to deal with the actions of the FDA and President Clinton's remarks.

"FDA's Planned Tobacco-Ad Rules Spur Suits Over Agency's Powers," by Milo Geyelin and Wade Lambert, appeared in the *WSJ* discussing the suits filed by the industry.

A *WSJ* article by Laura Bird, "Cigarette Machine Operators Are Asking Clinton for Change," reported that cigarette-machine operators who build vending machines are being targeted unfairly for failing to curb smoking among minors. The Amusement and Music Operators Association, whose members operate 80 percent of vending machines, are considering a lawsuit against Clinton's proposal to ban the machines.

A fourth article in the *WSJ*, "Ban on Tobacco Ads Might Stall Auto Racing," discussed the effect of the Clinton proposal on sporting events.

- 15 An article in the *NYT* by Glenn Collins, "Judge Who Ruled Pro-Tobacco Named to Hear Companies' Suit," reported that Judge William L. Osteen Sr., U.S. District Court for the Middle District of North Carolina, will hear the industry's suit against the FDA.

An editorial published in the *WSJ* titled "An FDA Smoke Screen," by Robert Goldberg, a senior research fellow at Brandeis University's Gordon Public Policy Center, likened tobacco to thalidomide, allowing the FDA to "reinvent itself as the only thing standing between our children and certain danger." He also explained that there is no need to protect our children because the hazards of smoking are well-publicized.

- 21 "Clinton Ad Ban could Strengthen Philip Morris," by Suein Hwang, appeared in

the *WSJ* (page 1 of Section B). Hwang explained the theory that historically, when cigarette advertising has been restricted, weaker brands lose market share and consequently, the more successful brands become stronger.

- 22 "Lighting a Fire: Long FDA Campaign and Bit of Serendipity Led to Tobacco Move," by Laurie McGinley and Timothy Noah, appeared in the *WSJ* (page 1). The article discussed the increasingly hostile environment toward tobacco smoking from the mid '80s to the present and the events leading up to President Clinton's and Commissioner Kessler's unveiling of the proposed FDA regulations on cigarette marketing and sales.
- 28 An article in *Business Week's* "News Analysis and Commentary" column appeared, titled "The FDA vs. Big Tobacco," which questioned FDA authority with a sidebar, "Warning: Cigarette Bans Do Not Curb Teen Smoking."

#### September 1995

- 1 "Philip Morris sending FDA Mail from Critics," by Peter Hardin of *The Richmond Times Dispatch*, reported that approximately 160,000 signed forms have been collected by PM, its contractors and consultants.
- 11 The *WSJ* reported that a group of tobacco-state congressmen introduced legislation to block the FDA's proposed regulation for limiting tobacco access to minors. The congressmen are Reps. L.F. Payne (D-Va.), Cass Ballenger (R-N.C.), Bart Gordon (D-Tenn.), plus 17 other cosponsors. A separate bill to overturn a provision in the FDA's proposed rule to ban name-brand sponsorship of tobacco companies in car races was introduced by Rep. David Funderburk (R-N.C.).
- 26 Rep. Scotty Baesler (D-Ky.) introduced legislation to penalize both the buyer and seller when underage youths purchase cigarettes. Under the bill, a store clerk selling cigarettes to minors would be punished in the same fashion as a salesperson caught selling alcohol to a minor, depending on the state. Furthermore, the minor would be fined \$100 for a first offense and made to perform community service or attend mandatory education classes on the hazards of smoking cigarettes. A person under the age of 18 using a false ID would be fined \$250. This bill would therefore bar the FDA from regulating the tobacco industry.

An advisory panel of the FDA recommended nonprescription sales of nicotine gum for smokers.

- 29 Sen. Jesse Helms (R-N.C.) introduced a bill to prohibit regulation of tobacco products and tobacco sponsorships of stock-car racing.
- 30 Commissioner Kessler spoke to the Tobacco-Free Florida Coalition during a meeting at the University of South Florida College of Public Health to promote the Clinton administration's plan to keep cigarettes away from teenagers.

#### October 1995

- 5 The five major tobacco companies filed a motion for summary judgment.
- 6 In a federal court in Greensboro, N.C., the National Association of Convenience

Stores sued the FDA to block its plan to regulate the sale of cigarettes to minors.

The FDA asked the court in Greensboro, N.C., to dismiss the suit by five tobacco companies, saying the suit was premature since the FDA "has taken no final action."

PM issued a statement to AP saying, "The FDA's request that a federal judge throw out the tobacco industry's challenge of the agency's unprecedented usurpation of congressional authority has no merit and is nothing more than an effort to avoid judicial review of the FDA's grab for regulatory power."

- 9 *The National Review* published the editorial "Anti-Medicine Man," by Henry Miller, M.D., who held a variety of posts at the FDA from 1979 to 1993. In the piece, Miller states that during his 15 years with the FDA, never before has raw political influence been permitted to dictate FDA decisions as in the Clinton administration and sharply criticizes Kessler's decision-making. Another story in the same issue, "The Kessler Kastle," discussed Kessler's power-grabbing.
- 13 An in-depth interview with Rep. Henry Waxman (D-Calif.) appeared in *Tobacco Reporter*.
- 17 An article in the *WSJ* by Tim Noah reported that the FDA had received nearly 30,000 form letters, most protesting tobacco regulation. The story showed that at least some of the letters had been printed by PM and also included a copy of an RJR full-page newspaper ad. Additionally, according to the report, many advertising agencies, magazine publishers, bar owners and stock-car racing fans have voiced their disapproval of the proposed tobacco regulation.

2048861260

DRAFT

- FTC

June 1995

7 PM USA agreed to stop placing cigarette billboards in prominent view of TV cameras at professional sports arenas and playing fields during televised baseball, basketball, football and hockey games across the United States. The agreement between PM and the Department of Justice bars placement of cigarette ads in locations "most likely" to appear on TV during those broadcasts.